

ORDINANCE NO. 3

SERIES 2007

**AN ORDINANCE AMENDING ARTICLE 19-3 OF
THE CRESTED BUTTE MUNICIPAL CODE TO
INCLUDE REQUIREMENTS FOR THE
MAINTENANCE OF SIDEWALKS AND THE
REMOVAL OF SNOW THEREFROM**

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town has broad constitutional and statutory powers to regulate the use of lands, including, without limitation, sidewalks within the Town limits;

WHEREAS, the Town's Municipal Code (the "Code") does not contain requirements and standards for the ordinary and normal maintenance and upkeep of pedestrian sidewalks, including, leaf, debris, ice and snow removal therefrom;

WHEREAS, the Town Council has determined that pedestrian sidewalks require, from time to time, ordinary and normal maintenance and upkeep so that the general public can safely and efficiently utilize such thoroughfares;

WHEREAS, safe and efficient pedestrian travel on the sidewalks in the Town is important to public travel and such travel effects the well being, health and safety of the inhabitants, businesses and visitors of the Town alike;

WHEREAS, the Town Council has determined that a partnership with property owners or other persons in charge of or having the control and supervision of any premises adjacent to any sidewalk whereby the Town and such parties will share in the responsibility for the performance ordinary and normal maintenance and upkeep of pedestrian sidewalks is necessary in order to ensure the safe and efficient pedestrian travel on said sidewalks;

WHEREAS, the Town Council has determined that it plans to adopt each year a plan for the management of snow clearing, removal and storage within the Town so as to further define the Town's plans for such snow management;

WHEREAS, the Town Council finds that the below amendments are in the best interests of the health, safety and general welfare of the residents of the Town; and

WHEREAS, the Town Council desires to amend the Code to provide for requirements for persons that adjoin such sidewalks to perform ordinary and normal maintenance on said sidewalks and upkeep the same.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Amending the title of ARTICLE 19-3, TOWN STREETS. The title of Article 19-3, TOWN STREETS, is hereby amended to read as follows:

"ARTICLE 19-3, TOWN STREETS; SIDEWALKS".

Section 2. Adding New Sections 19-3-2 through 19-3-6 to Article 19-3. New Sections 19-3-2 through 19-3-6 are added to Article 19-3 and shall read as follows:

"Section 19-3-2. Ordinary and Normal Maintenance of Sidewalks - Generally.

(A) The owner or other person in charge of or having the control or supervision of any premises shall perform ordinary and normal maintenance on the sidewalks adjoining such premises and keep such sidewalks in good and clean condition and remove all weeds, trash, leaves and any other debris from such sidewalks as necessary in order to provide safe, efficient and clean passage to pedestrian traffic. It shall be unlawful for any person to fail or refuse to comply with this requirement.

(B) Sidewalk – Definition. For purposes of this Article 19, "sidewalk" shall include only the concrete portion of pedestrian way fronting or adjacent to any private property.

(C) Owner or Other Person in Charge – Definition. For purposes of this Article 19-3, an "owner or other person in charge of or having the control and supervision of the premises" shall include, without limitation, an owner, tenant, occupant, lessee or other owner of a beneficial interest in the premises.

Section 19-3-3. Failure to Comply. Upon the failure or refusal of an owner or other person in charge of or having the control and supervision of the premises to perform ordinary and normal maintenance and upkeep on any sidewalk, the Town Manager or his designated representative may correct or maintain the same, as the case may be, by day's work or contract. Where any owner or other person in charge of or having control and supervision of the premises adjoining any sidewalk fails to perform ordinary and normal maintenance and upkeep on such sidewalk, said person shall be guilty of a misdemeanor and subject to a maximum fine of \$100.00 for each offense.

Section 19-3-4. Town's Election to Maintain Not a Waiver. The Town may, at its election, undertake to maintain any sidewalk as described in Section 19-3-2 in its sole discretion. Notwithstanding the Town's undertaking to maintain any sidewalks, neither the

Town's election to maintain any sidewalks nor the Town's actual undertaking such maintenance, shall limit the responsibility of the owner or other person in charge of or having the control and supervision of the premises adjoining such sidewalks to maintain the same as required under this Article 19-3.

Section 19-3-5. Removal of Snow and Ice from Sidewalks by Adjoining Parties; Sidewalks with Snowmelt Systems.

(A) Removal of Snow and Ice - Generally. Any owner or other person in charge of or having the control and supervision of any premises adjacent to any sidewalk shall cause to be removed and cleared away snow or ice from a path of at least five (5) feet in width from so much of the sidewalk as is adjacent to said premises. For owners or other persons in charge of or having the control and supervision of any premises with adjacent sidewalks that have snowmelt systems, such persons shall see to it that ice accumulating on sidewalks of neighbouring premises that are a result of the heated sidewalk shall be similarly removed and cleared away. It shall be unlawful for any person to fail or refuse to comply with this requirement.

(B) Sidewalks with Snowmelt Systems. Where any owner or other person in charge of or having the control and supervision of any premises installs or constructs sidewalks with snowmelt systems, the costs of all equipment and any energy necessary to heat such sidewalks shall be the sole responsibility of the owner or other person in charge of or having the control and supervision of any premises. Where any sidewalk with a snowmelt system is creating a dangerous condition through the build-up of ice on such sidewalk or any curb, gutter, street or alley and/or any neighbouring sidewalk, curb, gutter, street or alley, the Town may, at its sole discretion, require the owner or other person in charge of or having the control and supervision of such sidewalk to turn off the snowmelt functions on said sidewalk. At all times, the construction and operation of sidewalks with snowmelt systems must comply with applicable Town restrictions and requirements related to snowmelt systems contained in the Town's Energy Conservation Code, as amended.

Section 19-3-6. Failure to Comply with Snow Removal Requirements. In the event of the failure of any owner or other person in charge of or having the control and supervision of any premises to clear away snow and ice from any adjacent sidewalk as required in Section 19-3-5, the Town Manager, or his designated representative, may, at his election, cause such work to be performed by day's work or contract. Where any owner or other person in charge of or having control and supervision of any premises fails to clear away snow and ice from any sidewalk as required by Section 19-3-5, such person shall be guilty of a misdemeanor and subject to a maximum fine of \$100.00 for each offense. Nothing contained in Section 19-3-5 or this Section 19-3-6 is intended to, or shall have the effect of, affecting or otherwise altering the liability of any owner or other person in charge of or having the control and supervision of any premises adjacent to any sidewalk or the Town as it exists under Colorado law, as amended. Notwithstanding the Town's undertaking to clear away snow and ice from any sidewalk, neither the Town's election to perform such work nor the Town's actual undertaking to perform such work shall limit the responsibility of the owner or other person in charge of or having the control

and supervision of the premises adjoining such sidewalks, to clear away snow and ice from any sidewalk as required under Section 19-3-5."

Section 3. Severability. If any section, sentence, clause, phrase, word or other provision of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this Ordinance as an entirety, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 4. Savings Clause. Except as hereby amended, the Code shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this Ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 5 DAY OF February, 2007.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 19 DAY OF MARCH, 2007.

TOWN OF CRESTED BUTTE, COLORADO

By: Margaret J. Levy
Margaret J. Levy, Mayor Pro Tem

ATTEST:

Eileen Hughes
Eileen Hughes, Town Clerk

(SEAL)